

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
NO: 5:10-CR-00105-BR

UNITED STATES OF AMERICA,

v.

TIMOTHY MATTHEW MARTINEZ,

Defendant

ORDER

This matter is before the court on defendant's letter dated 23 August 2011 which the court construes as a motion for a free copy of his sentencing transcript. Defendant was sentenced on September 2010. Defendant does not have any proceeding pending before the undersigned. Based on the instant motion, it appears defendant desires the transcript to possibly support a potential habeas corpus motion. Without a pending proceeding, defendant cannot be provided a free transcript under § 753(f). See United States v. Horvath, 157 F.3d 131, 132 (2d Cir. 1998) ("Based on the plain language and necessary operation of the statute, we conclude that a motion for a free transcript pursuant to § 753(f) is not ripe until a [28 U.S.C.] § 2255 motion has been filed."); United States v. Shoaf, 341 F.2d 832, 833-34 (4<sup>th</sup> Cir. 1964) ("An indigent is not entitled to a transcript at government expense without a showing of the need, merely to comb the record in the hope of discovering some flaw." (citation omitted)). Because defendant has not yet filed a habeas corpus motion and shown a particularized need for the transcript, the motion is DENIED.

This 2 September 2011.



W. Earl Britt  
Senior U.S. District Judge